



REPUBLIC OF KENYA



**Wafula v Republic (Criminal Appeal 5 of 2025)
[2026] KEHC 233 (KLR) (21 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 5 OF 2025
DR KAVEDZA, J
JANUARY 21, 2026**

BETWEEN

EMMANUEL WAFULA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
30th May 2023 by Hon. C. Mwaniki (PM) at Kibera Chief Magistrate's
Court, Sexual Offence Case no. E009 of 2022 Republic vs Emmanuel Wafula)*

JUDGMENT

1. The appellants were charged and, after a full trial convicted for the offence of Defilement Contrary to Section 8 (1) (3) of the Sexual Offences Act No.3 of 2006. The particulars are that the appellant on the diverse dates between 3rd and 7th January 2022, at [Particulars Withheld] in Kibra Sub-County within Nairobi County, intentionally and unlawfully caused his penis to penetrate the vagina of A.A child aged 14 years. He was sentenced to ten (10) years imprisonment.
2. Being aggrieved, the appellants filed the present appeal challenging the totality of the prosecution evidence against which they were convicted. They complained that the sentence imposed was harsh and excessive. They urged the court to quash the conviction and set aside the sentence imposed.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See Okeno v Republic [1972] EA 32).
4. The prosecution called a total of seven (7) witnesses in support of its case. PW1, A.A, testified after voir dire examination that on 3rd January 2022, at approximately 7:00 pm, she was walking to Laini Area to



visit a friend. The appellant called out to her and asked her to talk. She agreed and entered his house, where she remained until Friday, 7th January 2022. During that period, they had sexual intercourse on multiple occasions. On Friday, the appellant told her to leave. She was seen by her father's friend, who informed her father of her whereabouts.

5. PW1 described the act in her own words: the appellant lay on top of her, spread her legs, and inserted his "dudu" (penis) into her private parts (vagina). In cross-examination, she explained that she did not raise any alarm because the appellant had threatened her. In re-examination, she confirmed that he forced her.
6. PW2, Benard Imbukli Luseka, father of PW1, stated that on 3rd January 2022, PW1 said she was going to relieve herself but did not return. He searched for her together with her sister but could not find her. Upon returning home, he noticed messages on his daughter's phone, including one reading "tokea". He called the number but received no response. The following day, he reported her disappearance to the Nyumba Kumi. On 7th January 2022, he received a call from a Nyumba Kumi elder informing him that PW1 had been located. He went to the appellant's house, where he found PW1. Together with others, they escorted the appellant to the police station and took PW1 to hospital for examination and treatment.
7. PW3, Lilian Kivita Kagode, mother of PW1, testified that on the material day her daughter went missing after going to relieve herself. PW1 was eventually found on 7th January 2022 in the company of the appellant.
8. PW4, Michelle Sechero, sister of PW1, stated that on the material day she was sent on an errand by her mother. Upon her return, she found her phone missing from the table. PW1 had taken it to the toilet to use the torch. PW4 went to check on her, and PW1 returned the phone. On 7th January 2022, PW1 was located at the appellant's house. PW4 later checked the phone logs and found a strange number. At 8:00 pm on 3rd January 2022, a message reading "tokea" had been received. In cross-examination, PW4 confirmed that PW1 took the phone to the toilet for light and stated that she did not know the appellant and first saw him at the police station.
9. PW5, Kevin Omondi Obiero, a friend of PW1's father, testified that on 7th January 2022, PW2 called him about his daughter's disappearance and showed him a photograph of PW1. Later that day, he saw the girl and followed her. She entered the appellant's house. He immediately called PW2, who arrived with others. They knocked on the door, when the appellant opened it, PW1 emerged from inside the house. In cross-examination, PW5 remained firm that he followed PW1 and saw her enter the appellant's house directly.
10. PW6, Alice Gari, a clinician at Babadogo Health Centre, examined PW1 on 10 January 2022. She produced the medical report recording painful lacerations at the 4 o'clock to 5 o'clock positions, a torn and healing hymen, and swollen lymph nodes on the left side of the forehead. These findings were consistent with recent penile-vaginal penetration.
11. PW7, Corporal Benjamin Maundu, formerly of Kibera Police Station, gave evidence that corroborated the accounts of PW2, PW3, PW4 and PW5 as to the report of disappearance, the tracing of PW1 to the appellant's house on 7th January 2022, the appellant's arrest, and the subsequent police investigation.
12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



13. To succeed in a prosecution for defilement, it must be proven that the appellant committed an act that caused penetration with a child. "Penetration" under Section 2 of the Act means, "the partial or complete insertion of the genital organs of a person into the genital organs of another person."
14. Further, section 8(1) and (3) of the *Sexual Offences Act*, No. 3 of 2006 provides thus:
 8. Defilement
 - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
 - 3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
15. The complainant, produced evidence supported by her birth certificate, which was tendered through her father (PW2). The certificate confirms that she was born on 22nd May 2007. She was therefore fourteen years of age at the time of the alleged offence between 3rd January 2022 and 7th January 2022. The age element of the offence of defilement under section 8(3) of the *Sexual Offences Act* is proved beyond reasonable doubt.
16. On the element of penetration, section 2 of the *Sexual Offences Act* defines the act to include any partial or complete insertion of the genital organs of one person into those of another. PW1 gave a clear and detailed account of the events. She testified that on 3rd January 2022, at approximately 7:00 pm, while heading to Laini Area to visit a friend, the appellant called her over and invited her to talk. She entered his house and remained there until 7th January 2022. During that period of approximately four days, the appellant had sexual intercourse with her on multiple occasions. PW1 described the act in her own words how the appellant defiled her.
17. This direct evidence of penetration was corroborated by the medical examination conducted by PW6, Alice Gari, a clinician at Babadogo Health Centre, on 10th January 2022. The medical report recorded painful lacerations at the 4 o'clock to 5 o'clock positions, a torn and healing hymen, and swollen lymph nodes on the left side of the forehead. These findings were consistent with recent repeated penile-vaginal penetration and supported PW1's account of the acts committed during her stay in the appellant's house.
18. On identification, PW1 was firm and unequivocal that the perpetrator was the appellant. She provided a detailed, coherent and consistent narrative of how she was lured into his house and of the repeated sexual acts that followed. Her testimony remained unshaken under cross-examination. PW2, her father Benard Imbukli Luseka, and PW5, Kevin Omondi Obiero, positively identified the appellant as the person in whose house PW1 was found on 7th January 2022. PW5 testified that he followed PW1 and saw her enter the appellant's house directly, after which he alerted PW2. Upon knocking, the appellant opened the door and PW1 emerged from inside. PW2 confirmed finding his daughter at the premises and escorting the appellant to the police station.
19. The appellant's defence was a bare denial. He claimed that he had travelled and only returned to Nairobi on 7th January 2022. He alleged that a group of people then knocked on his door demanding to know PW1's whereabouts. He suggested that the accusations were fabricated, that PW1 was intimidated into implicating him, and that she first saw and accused him at the police station. He adduced no alibi evidence, no corroborative witnesses, nor any documentation to support his claim of absence from Nairobi during the material period.



20. Upon re-evaluation of the evidence, this court finds the appellant's defence inconsistent and wholly implausible. It stands in stark contrast to PW1's detailed and unshaken testimony, the prompt tracing and recovery of PW1 from the appellant's house as corroborated by PW2 and PW5, the unchallenged medical evidence of recent penetration recorded by PW6 shortly after her rescue, and the absence of any credible explanation for PW1's prolonged presence in the appellant's premises or for the genital injuries observed.
21. The prosecution therefore proved all the essential elements of defilement contrary to section 8(3) of the *Sexual Offences Act* beyond reasonable doubt. The appellant's defence raises no reasonable doubt. The conviction is affirmed.
22. The appellant was sentenced to ten (10) years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, time spent in custody and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.
23. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JANUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.

